
**PENALTIES FOR SAFETY VIOLATIONS BY OPERATORS OF
COMMERCIAL AIRCRAFT**

APRIL 24 (legislative day, APRIL 21), 1986.—Ordered to be printed

Mr. DANFORTH, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 1750]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1750) to amend the Federal Aviation Act of 1958, as amended, to increase civil penalty limits for safety violations by persons engaged in commercial aircraft operations, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill do pass.

PURPOSE OF THE BILL

S. 1750, as reported, would amend the Federal Aviation Act of 1958 (the "Act") to increase civil penalty limits for safety violations by operators of commercial aircraft. The bill would also create a civil penalty for violation of those provisions of the act which require notification to the Federal Aviation Administration (FAA) of the construction of structures which could obstruct air navigation.

BACKGROUND AND NEEDS

Section 901 of the act sets out civil penalties which may be assessed against aircraft operators for violations of the act, and for violation of the regulations and orders issued thereunder. The present civil penalty ceiling of \$1,000 per violation has been in effect since 1938. The deterrent effect of the penalty has been substantially eroded in the nearly five decades which have followed. This legislation would increase the maximum civil penalty in section 901 of the act from \$1,000 to \$10,000 per violation, as the pen-

alty applies to persons who operate commercial aircraft. The bill would leave the present penalty ceiling of \$1,000 in effect for others in the aviation community.

In approving this increase in civil penalties for commercial aircraft operators, the Committee notes that merely increasing maximum civil penalties, without an accompanying resolve to assess meaningful fines against commercial operators, accomplishes little. In 1985, only 7 percent of FAA enforcement actions resulted in civil penalties, down some 10 percent from the average of the previous 4 years. Moreover, evidence suggests that the average civil penalty collected in enforcement cases ranges from \$2,000 to \$4,000. Clearly, without an FAA willingness to impose severe civil penalties where warranted, the authority to assess larger fines does little to deter safety violations.

The bill also addresses two separate but related needs. First, it would create a civil penalty for violations of section 1101 of the act, which requires notice to the FAA of the construction of hazards to the airways. Today only criminal penalties—seldom if ever imposed—are authorized for violations of that section.

Second, the bill provides the FAA with express authority to compromise penalties for less than the statutory amount for violations of certain sections of the act. Clearly some administrative flexibility is required in enforcing any penalty provision.

LEGISLATIVE HISTORY

S. 1750 was introduced by Senator Kassebaum on October 8, 1985, at the request of the administration. In view of the bill's straightforward nature, and in the absence of any objection to it, the Committee did not hold hearings on S. 1750.

The Committee ordered S. 1750 to be reported favorably, with an amendment in the nature of a substitute and an amendment to the title, without objection.

SUMMARY OF MAJOR PROVISIONS

As reported, S. 1750 would:

1. Amend section 901 of the act to increase the civil penalties for violations of the safety provisions of the act from \$1,000 to \$10,000.
2. Create a civil penalty of \$1,000 for violation of section 1101 of the act, which requires notification of proposed construction of structures which could pose a hazard to air navigation.
3. Amend the act to permit the FAA to compromise a civil penalty for less than the statutory amount for a safety violation of the act.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 7, 1986.

Hon. JOHN C. DANFORTH,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1750, a bill to amend the Federal Aviation Act of 1958, as amended, to increase civil penalty limits for safety violations by persons engaged in commercial aircraft operations, and for other purposes, as ordered reported by the Senate Committee on Commerce, Science, and Transportation, March 13, 1986.

The bill would increase from \$1,000 to \$10,000 the maximum civil penalty that the Federal Aviation Administration (FAA) could impose on a commercial aircraft operator for safety violations. It also would permit the FAA to impose a civil penalty of \$1,000 for violation of a law that requires the FAA to be notified of proposed construction or alteration of a structure that could pose a safety hazard. The FAA levied fines of \$1.2 million in 1984 and \$2.9 million in 1985 for civil violations (excluding hazardous material violations), including \$1.5 million in 1985 from a penalty case against American Airlines.

The budgetary impact of this bill is uncertain because it depends upon the extent to which the increased fines act as a deterrent to future safety violations. Assuming some deterrent effect, enactment of this bill is likely to have no significant impact on the budget of the federal government, and would have no impact on the budgets of state and local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

The bill would: (1) Create a civil penalty where a criminal penalty had existed before; (2) increase the dollar amount of an existing civil penalty; and (3) expressly authorize the FAA to compromise certain penalties. Nothing in these legislative changes would alter the existing regulatory scheme for prompting commercial aviation safety. No new burdens are created, and no new costs will be imposed on any person, except those who violate FAA safety rules and regulations.

There will be no effect on the personal privacy of individuals due to enactment of the legislation. No significant new paperwork burdens would be placed on any person if S. 1750 were enacted into law.

SECTION-BY-SECTION ANALYSIS

SECTION 1—CREATION OF CIVIL PENALTY

This section amends section 901(a)(1)(A) of the act so that a person may be subject to a civil penalty of \$1,000 for a violation of section 1101 of the act. Section 1101 requires a person, in accordance with FAA prescribed procedures, to notify the FAA of the proposed construction or alteration of a structure (including buildings, broadcast towers, etc.) where notice would promote safety in air commerce. At the present time, a person who violates section 1101 is subject to criminal sanctions not to civil penalties. The difficulty in prosecuting such violations renders the criminal penalties ineffective. In many cases, a civil penalty is a more appropriate way to proceed against a violator.

SECTION 2—INCREASED PENALTIES

This section amends section 901(a)(1) of the act to increase the level of civil penalty for violating specified provisions of the act and the Federal Aviation Regulations. It increases the penalty from a maximum of \$1,000 per violation to a sum not to exceed \$10,000 per violation.

This section enumerates three titles of the act, the violation of which would expose the offenders to the new, increased penalties: titles III, VI, and XII. Title III of the act includes provisions relating to air traffic rules, air navigation facilities, passengers security screening, and air transportation security in general. Title VI addresses safety regulations generally, including aircraft maintenance, inspections, and aircraft and airman certification. Title XII of the act, also subject to the new penalty provisions, addresses such matters as preserving the integrity of military airspace.

It should be emphasized that there are some titles of the act, e.g., title IV, which contains the act's consumer protection provisions, which are not the subject of the new and increased penalty levels. It should be emphasized that the increase in civil penalty level would apply only to a person who operates aircraft for the carriage of persons or property for compensation or hire.

SECTION 3—AUTHORITY TO COMPROMISE PENALTIES

This section amends section 901(a)(2) of the act to permit the FAA to compromise a civil penalty for less than the statutory amount for a violation of section 1101 (requirement to provide notice of hazardous structures), 1114 (certificate authority of foreign and domestic carriers which serve countries not committed to opposing terrorism), or 1115(e)(2)(B) (requirement to include a notice that a foreign airport has been determined not to maintain and administer effective security measures on or with a ticket purchased for transportation between the United States and such foreign airport).

While section 901(a)(2) today allows the FAA to compromise penalties for violations of most titles in the act, there is at present no authority to compromise penalties for violations of certain provisions of title XI. This section remedies that shortcoming.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in *italic*, existing law in which no change is proposed is shown in roman):

THE FEDERAL AVIATION ACT OF 1958

Section 901 of that Act

CIVIL PENALTIES

Safety, Economic, and Postal Offenses

SEC. 901. (a)(1) Any person who violates (A) any provision of title III, IV, V, VI, VII, XII, or of section 1101 or 1114 of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i), or any term, condition, or limitation of any permit or certificate issued under title IV, or (B) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed \$1,000 for each such violation, *except that the amount of such civil penalty shall not exceed \$10,000 for each such violation of title III, VI, or XII of this Act, or any rule, regulation, or order issued under any such title, by a person who operates aircraft for the carriage of persons or property for compensation or hire, and except that the amount of such civil penalty shall not exceed \$10,000 for each such violation which relates to the transportation of hazardous materials.* If such violation is a continuing one, each day of such violation shall constitute a separate offense. The amount of any such civil penalty which relates to the transportation of hazardous materials shall be assessed by the Secretary, or his delegate, upon written notice upon a finding of violation by the Secretary, after notice and an opportunity for a hearing. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require. The amount of any such civil penalty for any violation of any provision of title IV of this Act, or any rule, regulation, or order issued thereunder, or under section 1002(i) of this Act, or any term, condition, or limitation of any permit or certificate issued under title IV shall be assessed by the Board only after notice and an opportunity for a hearing and after written notice upon a finding of violation by the Board. Judicial review of any order of the Board assessing such a penalty may be obtained only pursuant to section 1006 of this Act. This subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect there-

to and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

(2) Any civil penalty may be compromised by the Secretary of Transportation in the case of penalties provided for in subsections (c) and (d) of this section or violations of title III, V, VI, or XII, or of section 1101, 1114, or 1115(e)(2)(B) of this Act or any rule, regulation, or order issued thereunder, or by the National Transportation Safety Board in the case of violations of title VII of this Act, or any rule, regulation, or order issued thereunder, or by the Postmaster General in the case of regulations issued by him. The amount of such penalty when finally determined or fixed by order of the Board, or the amount agreed upon in compromise, may be deducted from any sums which the United States owes to the person charged.

(b)-(d) * * *